

(9) *Carrier causation.* In order for a carrier to be liable under paragraph (a)(2), (4), (6), or (8) of this section, EPA must demonstrate, by reasonably specific showing by direct or circumstantial evidence, that the carrier caused the violation.

(10) *Denatured ethanol violation.* Any oxygenate blender who violates § 80.385(e) is liable for the violation.

(11) *Parent corporation liability.* Any parent corporation is liable for any violations of this subpart that are committed by any of its wholly-owned subsidiaries.

(12) *Joint venture and joint owner liability.* Each partner to a joint venture, or each owner of a facility owned by two or more owners, is jointly and severally liable for any violation of this subpart that occurs at the joint venture facility or facility owned by the joint owners, or is committed by the joint venture operation or any of the joint owners of the facility.

(13) *Failure to use credits violation.* Any small refiner that has an approved adjustment of its per-gallon cap under § 80.271 and that does not obtain (or generate) and use the required number of sulfur credits or allotments under § 80.271(d) by the time it submits its annual report under § 80.370 is deemed in violation of § 80.385(g).

(b) *Persons liable for failure to meet other provisions of this subpart.* (1) Any refiner, importer, distributor, reseller, carrier, wholesale purchaser-consumer, retailer, or oxygenate blender who fails to meet a provision of this subpart not addressed in paragraph (a) of this section is liable for a violation of that provision.

(2) Any refiner, importer, distributor, reseller, carrier, wholesale purchaser-consumer, retailer, or oxygenate blender who caused another person to fail to meet a requirement of this subpart not addressed in paragraph (a) of this section, is liable for causing a violation of that provision.

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§ 80.400 What defenses apply to persons deemed liable for a violation of a prohibited act?

(a) Any person deemed liable for a violation of a prohibition under § 80.395

(a)(3) through (8), will not be deemed in violation if the person demonstrates that:

(1) The violation was not caused by the person or the person's employee or agent; and

(2) The person conducted a quality assurance sampling and testing program, as described in paragraph (d) of this section. A carrier may rely on the quality assurance program carried out by another party, including the party who owns the gasoline in question, provided that the quality assurance program is carried out properly. Retailers and wholesale purchaser-consumers are not required to conduct quality assurance programs.

(b) In the case of a violation found at a facility operating under the corporate, trade or brand name of a refiner or importer, or a refiner's or importer's marketing subsidiary, the refiner or importer must show, in addition to the defense elements required under paragraphs (a)(1) and (2) of this section, that the violation was caused by:

(1) An act in violation of law (other than the Clean Air Act or this part 80), or an act of sabotage or vandalism;

(2) The action of any refiner, importer, retailer, distributor, reseller, oxygenate blender, carrier, retailer or wholesale purchaser-consumer in violation of a contractual agreement between the branded refiner or importer and the person designed to prevent such action, and despite periodic sampling and testing by the branded refiner or importer to ensure compliance with such contractual obligation; or

(3) The action of any carrier or other distributor not subject to a contract with the refiner or importer, but engaged for transportation of gasoline, despite specifications or inspections of procedures and equipment which are reasonably calculated to prevent such action.

(c) Under paragraph (a) of this section for any person to show that a violation was not caused by that person, or under paragraph (b) of this section to show that a violation was caused by any of the specified actions, the person must demonstrate by reasonably specific showing, by direct or circumstantial evidence, that the violation was

caused or must have been caused by another person and that the person asserting the defense did not contribute to that other person's causation.

(d) *Quality assurance and testing program.* To demonstrate an acceptable quality assurance and testing program under paragraph (a)(2) of this section, a person must present evidence of the following:

(1) A periodic sampling and testing program to ensure the gasoline the person sold, dispensed, supplied, stored, or transported, meets the applicable sulfur standard; and

(2) On each occasion when gasoline is found not in compliance with the applicable sulfur standard:

(i) The person immediately ceases selling, offering for sale, dispensing, supplying, offering for supply, storing or transporting the non-complying product; and

(ii) The person promptly remedies the violation and the factors that caused the violation (for example, by removing the non-complying product from the distribution system until the applicable standard is achieved and taking steps to prevent future violations of a similar nature from occurring).

(3) For any carrier who transports gasoline in a tank truck, the quality assurance program required under this paragraph (d) need not include periodic sampling and testing of gasoline in the tank truck, but in lieu of such tank truck sampling and testing, the carrier shall demonstrate evidence of an oversight program for monitoring compliance with the requirements of this subpart relating to the transport or storage of gasoline by tank truck, such as appropriate guidance to drivers regarding compliance with the applicable sulfur standard and product transfer document requirements, and the periodic review of records received in the ordinary course of business concerning gasoline quality and delivery.

§ 80.405 What penalties apply under this subpart?

(a) Any person liable for a violation under § 80.395 is subject to civil penalties as specified in section 205 of the Clean Air Act for every day of each such violation and the amount of eco-

nomie benefit or savings resulting from each violation.

(b) Any person liable under § 80.395(a)(1) or (2) for a violation of the applicable sulfur averaging standard or causing another party to violate that standard during any averaging period, is subject to a separate day of violation for each and every day in the averaging period. Any person liable under § 80.395(b) for a failure to fulfill any requirement for credit or allotment generation, transfer, use, banking, or deficit correction, is subject to a separate day of violation for each and every day in the averaging period in which invalid credits or allotments are generated or used.

(c)(1) Any person liable under § 80.395(a)(3), (4), (5), or (6) for a violation of an applicable sulfur per gallon cap standard under § 80.195, § 80.210, § 80.216, § 80.220 or § 80.240, a GPA use prohibition under § 80.219(c), or of causing another party to violate a cap standard or a GPA use prohibition, is subject to a separate day of violation for each and every day the non-complying gasoline remains any place in the gasoline distribution system.

(2) Any person liable under § 80.395(a)(8) for causing gasoline to be in the distribution system which does not comply with an applicable sulfur cap standard, a sulfur averaging standard, or a GPA use prohibition, is subject to a separate day of violation for each and every day that the non-complying gasoline remains any place in the gasoline distribution system.

(3) For purposes of paragraph (c) of this section, the length of time the gasoline in question remained in the gasoline distribution system is deemed to be twenty-five days, unless a person subject to liability or EPA demonstrates by reasonably specific showings, by direct or circumstantial evidence, that the non-complying gasoline remained in the gasoline distribution system for fewer than or more than twenty-five days.

(d) Any person liable under § 80.395(b) for failure to meet, or causing a failure to meet, a provision of this subpart is liable for a separate day of violation for each and every day such provision remains unfulfilled.